

The complaint

Ms B is unhappy with Unum Limited's decision to decline her claim.

What happened

Ms B has an income protection policy, provided by her employer, through Unum. She made two claims on the policy and both were declined. Ms B said she was diagnosed with vestibular migraines in 2019 and suffers with symptoms including headaches, fatigue, brain fog, dizziness and vision problems due to light sensitivity. She said her symptoms are aggravated by work and on two separate occasions, in August 2023 and again in June 2024, was too unwell to work. Ms B would like Unum to accept her claim and pay her benefit.

Unum said it declined both claims as there wasn't enough medical evidence to show she met the definition of incapacity. It said Ms B didn't notify it of her first claim in good time, which affected its ability to obtain contemporaneous medical evidence, however, it still reviewed the claim and said she didn't satisfy the incapacity term. Unum said it reached the same outcome for the second claim as the relevant medical evidence didn't explain why Ms B's symptoms prevented her from working.

Our investigator didn't uphold this complaint. He also said the medical evidence didn't go far enough to explain why Ms B's symptoms meant she was unable to fulfil the material and substantial duties of her insured occupation.

Ms B, unhappy with this, asked that an ombudsman review her case. In summary, she said the nature of her neurological condition makes it difficult to provide evidence in the form of conventional test results and is largely evidenced by her own testimony about her symptoms. She also said Unum and our investigator ignored the evidence she provided in the form of FIT notes and other medical opinions about her readiness to return to work.

Ms B said this is discriminatory. She also said Unum should arrange to contact her treating specialists for further information and conduct its own medical assessment to gather evidence with the view to accepting her claims.

And so, it's now for me to reach a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've also decided not to uphold it. My reasons for doing so are the same as those reached by our investigator. Whilst it's clear Ms B suffered with symptoms of vestibular migraines during both absences, it's unclear, from a medical perspective, why that meant she was unable to fulfil the material and substantial duties of her insured occupation. I'm not doubting Ms B suffered with her reported symptoms, but in order to make a successful claim, the medical evidence must explain, in detail, why her symptoms are of such a severity they preclude her from working. And the evidence I've seen doesn't go far enough to show that.

I'll explain why.

Although I've not referred to every piece of evidence provided, I wanted to reassure Ms B that I've still considered it. But I've focused primarily on the evidence and arguments I feel are central to the outcome of my final decision.

The relevant rule that applies in this case comes from the Insurance Conduct of Business Sourcebook (ICOBS) and says Unum must handle claims promptly and fairly and must not reject a claim unreasonably. I've thought carefully about Unum's obligations under ICOBS whilst assessing Ms B's case.

The policy terms say about incapacity;

"Insured occupation cover

A member is incapacitated if we are satisfied that they are:

- Unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and are*
- Not performing any occupation"*

I've highlighted this term as it's effectively the bar Ms B needs to meet to be considered incapacitated for the policy to accept her claim. The deferred period in this case is 26 weeks. That means Ms B must show, through persuasive medical evidence, she remained incapacitated for the whole of the deferred period. I should say to receive a diagnosis of an illness is not enough to satisfy that term. The evidence of the specialists involved with Ms B's care must also explain *why* her illness prevents her from carrying out the material and substantial duties of her insured role.

Claim one: deferred period 7 August 2023 – 5 February 2024.

I ought to note Ms B's notification of that claim was significantly late as she didn't tell Unum about her absence until after the deferred period had ended. She notified it in June 2024. This is important because it can prejudice the insurer's ability to gather contemporaneous medical information. Also, the policy terms state the claimant should notify Unum of a potential claim after ten weeks of absence. It also says should notification take place more than 90 days after the deferred period, Unum reserve the right not to pay any benefit. Ms B's claim significantly exceeded that deadline.

Unum still consented to assessing Ms B's claim despite its late notification and decided to decline liability. Unum said the available medical evidence didn't comment on Ms B's functional or psychological capacity and so it couldn't determine why she was unable to work. Having reviewed the evidence from that time, I'm in agreement that Unum's interpretation of the evidence wasn't unfair or unreasonable. The medical reports I've seen document Ms B's symptoms but also show they are intermittent, meaning there are periods where she's doing well and others less so. There's evidence to suggest she was well enough to take a break abroad in October 2023, however, Ms B said this culminated in a five-day period of incapacity. I think this persuasively evidences the up and down nature of Ms B's medical condition.

Further, in November 2023, Ms B discussed her improving symptoms with her specialist and there's evidence to show she was engaging with her employer in December to discuss a potential return to work. I think it's also important to note Ms B's neuro-otologist doesn't offer an explanation on why Ms B is unable to work. His reports document Ms B's self-described symptoms and changes to her medication, but they don't say anything about her functional capacity. Having carefully considered this evidence in the context of the policy terms, I think

Unum's decision to decline her claim was fair for the reasons explained. There's not enough evidence to persuasively show Ms B was totally incapacitated throughout the whole of the deferred period – which is what the policy requires.

Claim two: deferred period 17 June 2024 – 16 December 2024

Having carefully considered the reasons behind Unum's declinature of this claim, I think it's fair to say it was for similar reasons as the first claim. The medical evidence, although indicated Ms B was suffering with associated symptoms of vestibular migraine, doesn't go far enough to explain why she was cognitively or functionally unable to perform the material and substantial duties of her insured occupation.

I say that because there's still no clinical opinion given by Ms B's neuro-otologist in that regard. Ms B arranged to see the neuro-otologist at the beginning of her absence in June 2024. She explained she'd been attempting to return to work on a phased return however her symptoms were beginning to return. The evidence shows that whilst she was suffering with symptoms of a pressure feeling in her head, catch up sensations, nausea and fatigue, these symptoms weren't permanent and were intermittent.

The specialist recommended changes to her medication, as he had done on other occasions. Ms B told her specialist she was thinking of taking sick leave because she felt work exacerbated her symptoms, but the report doesn't say the specialist recommended this. But even if he had, that still wouldn't be persuasive enough in isolation to satisfy the incapacity term. It would need to provide a medical rationale on what elements of Ms B's role she'd be unable to undertake owing to her medical condition. And I've not seen any persuasive medical evidence that offers this in the way I've described as the specialist hasn't commented on her limitations or restrictions. He said he'd review Ms B in four months' time.

That review took place in October 2024, and Ms B reported there wasn't much change in her symptoms. She said they lasted anywhere between five days to three weeks and that they occurred every two weeks. Again, I'm persuaded his shows there are periods where Ms B wasn't incapacitated throughout the whole of the deferred period and so the medical evidence doesn't support her claim from that perspective either.

I noted Ms B was also under the care of the audio vestibular clinic and in November 2024 and she underwent a series of tests for her hearing and balance. All test results showed no abnormalities, other than a build up of wax in both ears that needed to be removed. And so, there's no evidence from a medical standpoint that offers any significant finding here to explain her reported symptoms.

Ms B highlighted a letter from her treating psychotherapist in December 2024 as evidence she was too unwell to work at that time. I've carefully considered this, but I remain unpersuaded as again, it doesn't explain in enough detail what part of her role she's unable to perform. The psychotherapist said she had been treating Ms B for around six weeks through weekly sessions and that she presented with extreme and debilitating anxiety. She acknowledged this was having a detrimental effect on Ms B's ability to engage in daily activities but doesn't offer any further explanation. I should say this is also the first time Ms B's anxiety was mentioned to Unum and so I'd have expected there to be more of a detailed assessment provided to the insurer so it could assess why this medical condition was precluding her from work.

The psychotherapist also acknowledged Ms B had been signed off work, but again, doesn't provide any persuasive clinical input on that point. She simply said that she understands Ms B is signed off from work at this time. And so, I've placed less weight on that piece of evidence for those reasons.

So, having carefully considered everything Ms B and Unum said, I'm persuaded Unum declined Ms B's claim fairly as it did so based on the available medical evidence – which doesn't support Ms B's claim that she was incapacitated, as described by the policy, for the whole of the deferred period.

My final decision

For the reasons set out above, I don't uphold Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 9 February 2026.

Scott Slade
Ombudsman